

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 270

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO LICENSURE; CHANGING REQUIREMENTS AND STANDARDS FOR  
SOCIAL WORKERS; EXPANDING LICENSE CLASSIFICATIONS; PROVIDING  
FOR BOARD IMMUNITY AND CONFIDENTIALITY; ALLOWING FOR  
EXEMPTIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-31-1 NMSA 1978 (being Laws 1989,  
Chapter 51, Section 1) is amended to read:

"61-31-1. SHORT TITLE. -- [~~Sections 1 through 24 of this  
act~~] Chapter 61, Article 31 NMSA 1978 may be cited as the  
"Social Work Practice Act". "

Section 2. Section 61-31-4 NMSA 1978 (being Laws 1989,  
Chapter 51, Section 4, as amended) is amended to read:

"61-31-4. LICENSE REQUIRED- - EXEMPTIONS. - -

A. Effective January 1, 1990, unless licensed to

1 practice social work under the Social Work Practice Act, no  
2 person shall:

3 (1) ~~[practice as an independent social worker]~~  
4 engage in the practice of social work as defined in the Social  
5 Work Practice Act; or

6 (2) use the title or represent himself as a  
7 licensed social worker or use any other title, abbreviation,  
8 letters, figures, signs or devices that indicate the person is  
9 licensed as a social worker.

10 B. Notwithstanding the provisions of Subsection A  
11 of this section, ~~[any individual who is employed in an~~  
12 ~~executive agency on or after the effective date of the Social~~  
13 ~~Work Practice Act under the title of social worker or other~~  
14 ~~title which is deemed to be social work practice by the board~~  
15 ~~and who has a bachelor's degree or higher in a field other than~~  
16 ~~social work shall not be required to be licensed until July 1,~~  
17 ~~1992; provided any employee of an executive agency who~~  
18 ~~qualifies for licensure under the provisions of the Social Work~~  
19 ~~Practice Act shall apply for licensure as provided in that act]~~  
20 a person who is hired on or after the effective date of this  
21 2005 act in a social and community service coordinator position  
22 in the protective services division of the children, youth and  
23 families department will be exempt from licensure under the  
24 Social Work Practice Act until December 31, 2007.

25 C. A person holding an exempt position pursuant to

1 Subsection B of this section on or after December 31, 2007  
2 shall continue to be exempt from the Social Work Practice Act  
3 only for so long as that person remains in that position.

4 D. The following conditions shall apply to the  
5 hiring of exempt positions pursuant to Subsection B of this  
6 section on or after the effective date of this 2005 act until  
7 December 31, 2007:

8 (1) before filling exempt positions, the  
9 protective services division of the children, youth and  
10 families department shall demonstrate that it has exercised  
11 reasonable effort to hire licensed social workers, or persons  
12 in related fields who are licensed by the counseling and  
13 therapy practice board or the New Mexico state board of  
14 psychologist examiners:

15 (2) individuals otherwise hired for exempt  
16 positions shall possess a bachelor's or master's degree in one  
17 of the following related fields from an accredited  
18 post-secondary educational institution, and otherwise meet  
19 written minimum standards established by the children, youth  
20 and families department:

21 (a) psychology;

22 (b) guidance and counseling;

23 (c) criminal justice;

24 (d) sociology;

25 (e) mental health counseling;

. 156354. 1

1 (f) special education; or

2 (g) family studies;

3 (3) neither the children, youth and families  
4 department nor the person hired for an exempt position shall  
5 hold that person out to be a licensed social worker, nor shall  
6 the exemption confer any indicia of licensure for the person  
7 holding the exempt position; and

8 (4) the children, youth and families  
9 department shall develop and implement a written policy for  
10 adequate training, education and supervision of exempt  
11 employees by licensed personnel."

12 Section 3. A new section of the Social Work Practice Act,  
13 Section 61-31-4.1 NMSA 1978, is enacted to read:

14 "61-31-4.1. [NEW MATERIAL] UNLAWFUL PRACTICE. --

15 A. Except as otherwise provided in the Social Work  
16 Practice Act, it is unlawful for any person to engage in the  
17 practice of:

18 (1) baccalaureate social work unless duly  
19 licensed as a baccalaureate social worker under the applicable  
20 provisions of the Social Work Practice Act;

21 (2) master's social work unless duly licensed  
22 as a master social worker under the applicable provisions of  
23 the Social Work Practice Act; and

24 (3) independent social work unless duly  
25 licensed as an independent social worker under the applicable

. 156354. 1

1 provisions of the Social Work Practice Act.

2 B. A person shall not offer social work services or  
3 use the designation social worker, licensed baccalaureate  
4 social worker, licensed master's social worker, licensed  
5 independent social worker or the initials LBSW, LMSW or LISW or  
6 any other designation indicating licensure status or hold  
7 himself out as practicing social work as a baccalaureate social  
8 worker, master social worker or independent social worker  
9 unless duly licensed as such.

10 C. The provisions of social work services to a  
11 person in this state through telephonic, electronic or other  
12 means, regardless of the location of the social worker, is  
13 subject to regulation.

14 D. Any person engaging in the practice of social  
15 work without first complying with the provisions of the Social  
16 Work Practice Act is guilty of a misdemeanor and upon  
17 conviction shall be sentenced pursuant to the provisions of  
18 Section 31-19-1 NMSA 1978.

19 E. Students currently participating in a social  
20 work program approved by the board are exempt from licensure  
21 under the Social Work Practice Act when completing internship,  
22 externship or other social work experience requirements for  
23 such programs.

24 F. A person licensed to practice social work in  
25 another jurisdiction who is providing services within the scope

. 156354. 1

1 of practice designated by such license in response to a  
2 disaster declared by the appropriate authority or governor of  
3 this state may upon prior written notice to the board provide  
4 such services in this jurisdiction for a period of time not to  
5 exceed sixty consecutive days per year without applying for a  
6 license. The practitioner who provides services under this  
7 subsection shall be deemed to have submitted to the  
8 jurisdiction of the applicable board and be bound by the laws  
9 of this state."

10 Section 4. Section 61-31-7 NMSA 1978 (being Laws 1989,  
11 Chapter 51, Section 7, as amended) is amended to read:

12 "61-31-7. BOARD CREATED. --

13 A. [~~There is created~~] The "board of social work  
14 examiners" is created.

15 B. The board shall be administratively attached to  
16 the department.

17 C. The board shall consist of seven members who are  
18 representative of the geographic and ethnic groups within New  
19 Mexico, who are United States citizens and who have been New  
20 Mexico residents for at least five years prior to their  
21 appointment. Of the seven members:

22 (1) four members shall have been engaged in  
23 social work practice for at least five years; at least two of  
24 the four shall hold a master's degree in social work; and at  
25 least two shall hold a bachelor's degree in social work from

1 schools of social work that are accredited by the council on  
2 social work education. At least one of these members shall be  
3 engaged primarily in ~~[clinical]~~ independent social work  
4 practice; one member shall be engaged primarily in education;  
5 one member shall be engaged primarily in administration or  
6 research in social work practice; and at least one member shall  
7 be engaged primarily in community organization, planning and  
8 development. These members shall not hold office in any  
9 professional organization of social workers during their tenure  
10 on the board; and

11 (2) three members shall represent the public.

12 The public members shall not have been licensed or have  
13 practiced as social workers. Public members shall not have any  
14 significant financial interest, whether direct or indirect, in  
15 social work practice.

16 D. Members of the board shall be appointed by the  
17 governor for staggered terms of three years, except that, in  
18 making the initial appointments, three members shall be  
19 appointed for terms ending June 30, 1990; three members for  
20 terms ending June 30, 1991; and four members for terms ending  
21 June 30, 1992. Each member shall hold office until ~~[his]~~ that  
22 member's successor is appointed and qualified. Vacancies shall  
23 be filled for the unexpired term in the same manner as original  
24 appointments.

25 E. Except for the representatives of the public on

1 the board, the governor shall appoint board members from a list  
2 of nominees submitted by social work organizations and  
3 individual social work professionals.

4 F. Members of the board shall be reimbursed as  
5 provided in the Per Diem and Mileage Act and shall receive no  
6 other compensation, perquisite or allowance.

7 G. The board shall elect a [~~chairman~~] chairperson  
8 and other officers as deemed necessary to administer its  
9 duties.

10 H. A simple majority of the board members currently  
11 serving shall constitute a quorum of the board.

12 I. The board shall meet at least once a year and at  
13 such other times as it deems necessary. Other meetings may be  
14 called by the [~~chairman~~] chairperson upon the written request  
15 of a quorum of the board.

16 J. The governor may remove any member from the  
17 board for the neglect of any duty required by law, for  
18 incompetence, for improper or unprofessional conduct as defined  
19 by board regulation or for any reason that would justify the  
20 suspension or revocation of [~~his~~] that member's license to  
21 practice social work.

22 K. [~~No~~] A board member shall not serve more than  
23 two consecutive terms, and any member failing to attend, after  
24 proper notice, three [~~executive~~] consecutive meetings shall  
25 automatically be removed as a board member, unless excused for

1 reasons set forth in board regulations.

2 L. In the event of a vacancy for any reason, the  
3 board secretary shall immediately notify the governor and the  
4 board of the vacancy and the reason for its occurrence to  
5 expedite the appointment of a new board member within a  
6 six-month period. "

7 Section 5. Section 61-31-8 NMSA 1978 (being Laws 1989,  
8 Chapter 51, Section 8, as amended) is amended to read:

9 "61-31-8. BOARD'S AUTHORITY. --In addition to any  
10 authority provided by law, the board shall have the authority  
11 to:

12 A. adopt and file, in accordance with the State  
13 Rules Act, rules and regulations necessary to carry out the  
14 provisions of the Social Work Practice Act, in accordance with  
15 the provisions of the Uniform Licensing Act, including the  
16 procedures for an appeal of an examination failure;

17 B. select, prepare and administer, at least  
18 annually, written examinations for licensure [~~that shall~~  
19 ~~include a testing of the knowledge of New Mexico cultures~~];

20 C. adopt a professional code of ethics;

21 D. appoint advisory committees pursuant to Section  
22 61-31-19 NMSA 1978;

23 E. conduct hearings on an appeal of a denial of a  
24 license based on the applicant's failure to meet the minimum  
25 qualifications for licensure. The hearing shall be conducted

. 156354. 1

1 pursuant to the Uniform Licensing Act;

2 F. require and establish criteria for continuing  
3 education;

4 G. issue subpoenas, statements of charges,  
5 statements of intent to deny licenses and orders and delegate  
6 in writing to a designee the authority to issue subpoenas,  
7 statements of charges and statements of intent to deny licenses  
8 and establish procedures for receiving, investigating and  
9 conducting hearings on complaints;

10 H. approve appropriate supervision for those  
11 persons seeking licensure as independent social workers;

12 I. issue provisional licenses and licenses based on  
13 credentials to persons meeting the requirements set forth in  
14 the Social Work Practice Act;

15 J. determine qualifications for licensure,  
16 including the requirement to demonstrate an awareness and  
17 knowledge of New Mexico cultures;

18 K. set fees for licenses as authorized by the  
19 Social Work Practice Act and authorize all disbursements  
20 necessary to carry out the provisions of the Social Work  
21 Practice Act; and

22 L. keep a record of all proceedings and shall make  
23 an annual report to the governor. "

24 Section 6. A new section of the Social Work Practice Act,  
25 Section 61-31-8.1 NMSA 1978, is enacted to read:

. 156354. 1

1 "61-31-8.1. [NEW MATERIAL] ACTIONS OF BOARD--IMMUNITY--  
2 CERTAIN RECORDS NOT PUBLIC RECORDS. --

3 A. A member of the board or a person working on  
4 behalf of the board shall not be civilly liable or subject to  
5 civil damages for any good faith action undertaken or performed  
6 within the proper functions of the board.

7 B. All written and oral ~~communications~~ made by a  
8 person to the board relating to actual or potential  
9 disciplinary action shall be confidential ~~communications~~ and  
10 are not public records for the purposes of the Public Records  
11 Act. All data, ~~communications~~ and information acquired by the  
12 board relating to actual or potential disciplinary action shall  
13 not be disclosed except:

14 (1) to the extent necessary to carry out the  
15 board's functions;

16 (2) as needed for judicial review of the  
17 board's actions; or

18 (3) pursuant to a court order issued by a  
19 court of competent jurisdiction.

20 C. Notwithstanding the provisions of Subsection B  
21 of this section, at the conclusion of an actual disciplinary  
22 action by the board, all data, ~~communications~~ and information  
23 acquired by the board relating to an actual disciplinary action  
24 taken against a person subject to the provisions of the Social  
25 Work Practice Act shall be public records, pursuant to the

. 156354. 1

1 provisions of the Public Records Act. "

2 Section 7. Section 61-31-9 NMSA 1978 (being Laws 1989,  
3 Chapter 51, Section 9) is amended to read:

4 "61-31-9. REQUIREMENTS FOR LICENSURE. --

5 A. The board shall issue a license as a  
6 baccalaureate social worker to any person who files a completed  
7 application, accompanied by the required fees, and who submits  
8 satisfactory evidence that the applicant:

9 (1) has reached the age of majority;

10 (2) has at least a bachelor's degree in social  
11 work from a program accredited by the council on social work  
12 education; and

13 (3) demonstrates professional competence by  
14 satisfactorily passing a written examination as prescribed by  
15 the board.

16 B. The board shall issue a license as a master  
17 social worker to any person who files a completed application,  
18 accompanied by the required fees, and who submits satisfactory  
19 evidence that the applicant:

20 (1) has reached the age of majority;

21 (2) has obtained a master's degree in social  
22 work from a graduate school of social work accredited by the  
23 council on social work education; and

24 (3) demonstrates professional competence by  
25 satisfactorily passing a written examination as prescribed by

1 the board.

2 C. The board shall issue a license as an  
3 independent social worker to any person who files a completed  
4 application, accompanied by the required fees, and who submits  
5 satisfactory evidence that the applicant:

6 (1) has reached the age of majority;

7 (2) has obtained a master's degree in social  
8 work from a graduate school of social work accredited by the  
9 council on social work education;

10 (3) has two years of postgraduate social work  
11 practice as a licensed master social worker or its equivalent  
12 under appropriate supervision; and

13 (4) demonstrates professional competence by  
14 satisfactorily passing a written examination as prescribed by  
15 the board.

16 D. Notwithstanding the provisions of this section,  
17 the board may grant a license on a case-by-case basis to those  
18 employees of an executive agency who are currently practicing  
19 social work as defined in Section [~~6 of the Social Work~~  
20 ~~Practice Act~~] 61-31-6 NMSA 1978 and have been so employed for  
21 at least ten years prior to the effective date of [~~that~~] the  
22 Social Work Practice Act. "

23 Section 8. Section 61-31-13 NMSA 1978 (being Laws 1989,  
24 Chapter 51, Section 13) is amended to read:

25 "61-31-13. LICENSURE BY CREDENTIALS. --The board may

. 156354. 1

1 license an applicant without written examination, provided  
2 [~~that he~~] the applicant possesses a valid social worker license  
3 issued by the appropriate examining board under the laws of any  
4 other state or territory of the United States, the District of  
5 Columbia or any foreign nation [~~which~~] that, in the judgment of  
6 the board, has requirements [~~including knowledge of New Mexico~~  
7 ~~cultures, substantially equivalent to or exceeding those in the~~  
8 ~~Social Work Practice Act~~] equivalent to or exceeding those in  
9 the Social Work Practice Act. Applicants applying for  
10 licensure by credentials shall also demonstrate by means  
11 established by the board that they have awareness and knowledge  
12 of New Mexico cultures for the licensure level sought."

13 Section 9. Section 61-31-14 NMSA 1978 (being Laws 1989,  
14 Chapter 51, Section 14, as amended) is amended to read:

15 "61-31-14. LICENSE RENEWAL. --

16 A. Each licensee shall renew his license annually  
17 by submitting a renewal application on a form provided by the  
18 board. At the time of license renewal, the board shall require  
19 a licensee to produce evidence of continuing education, as  
20 prescribed by the board.

21 B. A thirty-day grace period shall be allowed each  
22 licensee after each annual licensing period, during which time  
23 licenses may be renewed upon payment of the renewal fee and  
24 providing evidence of continuing education as [~~required under~~  
25 ~~the Social Work Practice Act~~] prescribed by the board.

1 C. Any licensee who allows his license to lapse for  
2 longer than three months shall have the license automatically  
3 revoked and shall be required to take a written examination.

4 D. A late penalty fee shall be assessed after the  
5 thirty-day grace period has expired for anyone attempting to  
6 renew a license to practice social work.

7 E. Any person licensed under the Social Work  
8 Practice Act who wishes to assume inactive status in the  
9 practice of social work shall notify the board's administrator  
10 in writing prior to the July 1 expiration of that person's  
11 current license. As part of the written request for inactive  
12 status, the licensee shall show proof of having completed the  
13 required continuing education hours. If the licensee has not  
14 met the continuing education requirements, inactive status may  
15 be granted, but the licensee shall be subject to all rules  
16 related to continuing education if reinstatement of license is  
17 requested. The practice of social work in New Mexico under an  
18 inactive license is strictly prohibited. Any person licensed  
19 under the Social Work Practice Act who has assumed inactive  
20 status may notify the board, in writing, of that person's  
21 desire to resume active practice. The applicant seeking  
22 reinstatement of an inactive license shall, in addition to  
23 other requirements established by the board, provide  
24 satisfactory proof of completion of no less than ten hours of  
25 continuing education for each year of inactive status.

. 156354. 1

1           F. The board shall not accept applications for  
2 inactive status from licensees who are under investigation for  
3 violations of the Social Work Practice Act or who have an  
4 inactive complaint pending with the board.

5           G. The board shall accept applications from a  
6 social worker who is impaired as defined in the Social Work  
7 Practice Act and who is participating in a rehabilitation plan  
8 approved by the board. The board may, at its discretion,  
9 require that an applicant for reinstatement take and pass a  
10 written or oral examination as prescribed by the board."

11           Section 10. A new section of the Social Work Practice  
12 Act, Section 61-31-14.1 NMSA 1978, is enacted to read:

13           "61-31-14.1. [NEW MATERIAL] RETIREMENT STATUS. --

14           A. Any person licensed under the Social Work  
15 Practice Act who wishes to retire from practice shall notify  
16 the board's administrator in writing prior to the July 1  
17 expiration of the person's current license. As part of the  
18 written request for retirement status, the licensee shall show  
19 proof of having completed the required continuing education  
20 hours. If the licensee has not met the continuing education  
21 requirements, retirement status may be granted but the licensee  
22 shall be subject to all rules related to continuing education  
23 if reinstatement of license is requested.

24           B. Upon approval by the board of the request for  
25 retirement status, the licensee shall assume retirement status

. 156354. 1

1 and be exempt from payment of the yearly renewal fees during  
2 the period of retirement.

3 C. The practice of social work in New Mexico under  
4 a retired license is strictly prohibited. Any person licensed  
5 under the Social Work Practice Act who has retired may notify  
6 the board in writing of that person's desire to resume active  
7 practice.

8 D. The person seeking reinstatement of a retired  
9 license shall in addition to other requirements established by  
10 the board, provide satisfactory proof of:

11 (1) completion of no less than ten hours of  
12 continuing education for each year of retirement; such  
13 continuing education to be accumulated in accordance with the  
14 rules; and

15 (2) completion of all continuing education  
16 requirements determined to have been unmet at the time  
17 retirement status was granted.

18 E. The board may at its discretion require that an  
19 applicant for reinstatement take and pass a written or oral  
20 examination as prescribed by the board.

21 F. A retired person licensed under the Social Work  
22 Practice Act shall not reactivate his practice until receipt of  
23 the new license.

24 G. The board shall not accept applications for  
25 retirement from licensees who are under investigation for

. 156354. 1

1 violations of the Social Work Practice Act or who have an  
2 active complaint pending with the board.

3 H. The board shall accept applications under this  
4 section from any social worker who is impaired as defined in  
5 the Social Work Practice Act and is participating in a  
6 rehabilitation plan approved by the board. "

7 Section 11. Section 61-31-15 NMSA 1978 (being Laws 1989,  
8 Chapter 51, Section 15) is amended to read:

9 "61-31-15. [~~LICENSE~~] FEES. -- Applicants for licensure and  
10 other persons shall pay fees set by the board, not to exceed:

11 A. for written examination for any level of  
12 licensure other than initial licensure, two hundred dollars  
13 (\$200);

14 B. for initial licensure following a written  
15 examination as a baccalaureate social worker, two hundred  
16 dollars (\$200);

17 C. for initial licensure following a written  
18 examination as a master social worker, three hundred dollars  
19 (\$300);

20 D. for initial licensure following a written  
21 examination as an independent social worker, three hundred  
22 dollars (\$300);

23 E. for licensure by credentials at any level, three  
24 hundred dollars (\$300);

25 F. for licensure without written examination,

1 including a provisional license, as a baccalaureate social  
2 worker, one hundred fifty dollars (\$150);

3 G. for licensure without written examination,  
4 including a provisional license, as a master social worker, two  
5 hundred fifty dollars (\$250);

6 H. for licensure without written examination,  
7 including a provisional license, as an independent social  
8 worker, three hundred dollars (\$300);

9 I. for renewal of a license as a baccalaureate  
10 social worker, one hundred dollars (\$100);

11 J. for renewal of a license as a master social  
12 worker, two hundred dollars (\$200);

13 K. for renewal of a license as an independent  
14 social worker, three hundred dollars (\$300);

15 L. for a late fee for failure to renew within the  
16 allotted grace period, one hundred dollars (\$100); ~~and~~

17 M. for a duplicate license, twenty-five dollars  
18 (\$25.00); and

19 N. for reasonable administrative fees, three  
20 hundred dollars (\$300). "

21 Section 12. Section 61-31-16 NMSA 1978 (being Laws 1989,  
22 Chapter 51, Section 16) is amended to read:

23 "61-31-16. FUND ESTABLISHED. --

24 A. ~~[There is created in the state treasury]~~ The  
25 "board of social work examiners fund" is created in the state

. 156354. 1

1 treasury.

2 B. All money received by the board under the Social  
3 Work Practice Act shall be deposited with the state treasurer  
4 for credit to the fund. The state treasurer shall invest the  
5 fund as other state funds are invested, and all income derived  
6 from investment of the fund shall be credited to the fund.

7 Money in the fund is subject to appropriation by the  
8 legislature. All balances in the fund shall remain in the fund  
9 and shall not revert to the general fund.

10 C. Money in the fund is appropriated to the board  
11 and shall be used only for the purpose of meeting the necessary  
12 expenses incurred in carrying out the provisions of the Social  
13 Work Practice Act. "

14 Section 13. EMERGENCY.--It is necessary for the public  
15 peace, health and safety that this act take effect  
16 immediately. "

underscored material = new  
[bracketed material] = delete